THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.24827 OF 2006

Dated 08-08-2007

Between:

Sri M. Venkateswara Rao, and others

…Petitioners

And

The Government of A.P.,
Rep. by its Principal Secretary,
Agriculture & Marketing,
Hyderabad, and others.

…Respondents

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.24827 OF 2006

ORDER:

The Government of India noticed that there is shortage of storage facility of food grains. It evolved a scheme, named as, Gramin Bhandaran Yojana, to encourage the State Governments, to undertake construction of Godowns, with private participation. The State of Andhra Pradesh, was allotted godowns up to the capacity of 20 lakh tonnes. Seven years guarantee was provided for storage of food grains, in the godowns so constructed.

The petitioners responded to the notifications issued by the concerned authorities, in this regard, and have undertaken construction of godowns.

With a view to encourage speedier construction of the godowns, the 1st respondent issued G.O.Ms.No.45, Agriculture and Co-operation (Mktg.II) Department, dated 19-02-2001. Apart from stipulating the rent to be paid for the godowns, the G.O provided for incentive, in the form of Rs.100/- for the capacity of each metric tonne, if the godown is handed over after completion of construction, within 65 days, from the date of the allotment. This incentive would be available in a reduced form,

up to 115 days, and thereafter, it would ceased to be available.

Petitioners submitted their claims for payment of the incentive under G.O.Ms.No.45. The 1st respondent rejected the claims through memo dated 19-05-2006, on the ground that the scheme under

G.O.Ms.No.45 stood closed, with the expiry of 115 days, from the date of issue. The same is challenged in this writ petition.

Petitioners contend that, the view taken by the 1st respondent cannot be sustained in law, and that there is nothing in the G.O., to indicate that, it would be operative only for 115 days.

Counter-affidavits are filed by all the respondents. It is urged that the incentive provided for, under G.O.Ms.No.45, was available only for a period of 115 days, and not thereafter. Another point urged on behalf of the respondents is, that the relevant date, in the context of extension of the benefit, is the one, on which the possession was handed over to the State Warehousing Corporation, and that the handing over, in the instant case, has taken place only after 115 days.

Heard Smt. D. Geetha, learned counsel for the petitioners; learned Government Pleader for Agriculture; learned Standing Counsel for A.P. State Warehousing Corporation, and learned Standing Counsel for the Agricultural Market Committee.

The petitioners were allotted the work of construction of godowns, under the Scheme, evolved by the Central Government. The godowns were constructed as per the specifications, and they have since been put to use. The 1st respondent issued G.O.Ms.No.45, dated 19-02-2001, dealing with certain salient features of the Scheme. On the one hand, it provided for incentives, to those, who complete the construction below 115 days, and disincentives to those, who delay the construction. The relevant clause reads as under:

> "a) xxxx
> b) xxxx
> c) xxxx
> d) There will be an outer period of 100 days for construction of godowns. If the construction is not completed in 100 days, there will be disincentives. However, parties can also

complete construction in 65 days, if they adopt quick and modular construction technology for which State Government will give incentives. The incentives and disincentives shall be as follows:-

i) Rs.100/- per M.T. capacity will be given, if godown is constructed and handed over to State Warehousing Corporation within 65 days. For every one-day delay in construction, the incentive will be reduced at the rate of Rs.1/- per day, up to 115 days. After 115 days, incentives will not be given.

ii) For construction of a 10,000 MT godowns, if a private party constructs it within 65 days, he will get an incentive of Rs.10.00 lakhs, for 66 days, it will be Rs.9.90 lakhs, for 67 days, it will be Rs.9.80 lakhs, and so on,

till the 115 days, when he will be eligible for only Rs.5.00 lakh. The starting date for the incentive will be 25.2.2001. The date of taking over possession by State Warehousing Corporation will be the cut off date, to calculate the eligibility for the incentives".

The maximum incentive would be available, if the construction is completed within 65 days, and it gradually gets reduced, with each passing day, up to 115 days. The petitioners claim to have constructed the godowns within 115 days, and submitted their claims. The 1st respondent took the view, that the Scheme stood closed, with the expiry of 115 days, from the date of the G.O., i.e. by 20-06-2001, and that since the agreements in favour of the petitioners were entered into, subsequent to that date, they are not entitled for the benefit. No other reason is mentioned in that memo. However, in the counter-affidavits, a dispute is raised, as to the date of handing over of the possession.

So far as the view taken by the 1st respondent, in its impugned memo, is concerned, it does not receive or derive support from G.O.Ms.No.45. The G.O did not restrict the extension of the benefit, or

incentive to any particular period. On the other hand, the very fact that the respondents applied the provisions of the G.O.,
in other respects, such as, the rate of rent; clearly discloses that the G.O. is not time-specific. Therefore, the view taken by the 1st respondent, through the impugned G.O., cannot be sustained. However, the question, as to whether the petitioners have completed the construction within 115 days, and handed over the possession to the Warehousing Corporation; needs to be examined, with reference to the relevant records.

For the foregoing reasons, the writ petition is allowed, and the impugned memo dated 19-05-2006, is set aside. The 1st respondent is directed to reconsider the case of the petitioners, within four weeks from today, by verifying the date of completion of the construction, and handing over of the possession of the godowns, to the State Warehousing Corporation; and extend the benefit under G.O.Ms.No.45, dated 19-02-2001, to the extent, they are found eligible.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt. 08-08-2007

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